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13 CYBERSITTER, LLC d/b/a Solid Oak Software

14
15 UNITED STATES DISTRICT COURT

16 CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION

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18 CYBERSITTER, LLC, a California limited
19 liability company, d/b/a Solid Oak Software,

20 Plaintiff,

21 v.

22 The People's Republic of China, a foreign
23 state; Zhengzhou Jinhui Computer System
24 Engineering Ltd., a Chinese corporation;
25 Beijing Dazheng Human Language
26 Technology Academy Ltd., a Chinese
27 corporation; Sony Corporation, a Japanese
28 corporation; Lenovo Group Limited, a
Chinese corporation; ASUSTeK Computer
Inc., a Taiwanese corporation; BenQ
Corporation, a Taiwanese corporation; Haier
Group Corporation, a Chinese corporation;
DOES 1-10, inclusive,

Defendants.

CASE NO. CV 10-00038 JST (SH)

**REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF PLAINTIFF'S
OPPOSITIONS TO DEFENDANTS'
RESPECTIVE MOTIONS TO
DISMISS**

Judge: Hon. Josephine Staton Tucker
Ctrm: 10A

Hearing Date: July 18, 2011
Hearing Time: 10:00 a.m.

REQUEST FOR JUDICIAL NOTICE

Plaintiff CYBERSitter, LLC (“Plaintiff”) respectfully submits this Request for Judicial Notice pursuant to Federal Rule of Evidence 201. Plaintiff requests that the Court take judicial notice of the following facts which are “not subject to reasonable dispute” as they are “capable of accurate and ready determination by sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2).

Haier's Patent Registrations with the USPTO

1. Plaintiff requests that the Court take judicial notice of Haier's thirty-five (35) patent applications and registrations on file in the United States Patent and Trademark Office ("USPTO"). A true and correct copy of computer print-outs from the USPTO's website showing thirty-five (35) hits for assignee "Haier Group Corporation" is attached as **Exhibit 7**. *Feathercombs, Inc. v. Solo Products Corp.*, C.A.2 (N.Y.) 1962, 306 F.2d 251, 134 U.S.P.Q. 209, certiorari denied 83 S.Ct. 253, 371 U.S. 910, 9 L.Ed.2d 170, 135 U.S.P.Q. 503 (United States patents may be judicially noticed in discretion of court and may be noticed on appeal though not introduced in evidence and passed on by court below.).

2. Information pertaining to Haier's U.S. patent applications and registrations is publicly available at the USPTO website at www.uspto.gov. The user should move down to the area labeled "Patents" and click on the link labeled "Search." The user should then click on the link labeled "Quick Search." The user should type "Haier Group Corporation" into the box next to "Term 1." The user should then click on the box next to "Field 1" and toggle down and select "Assignee Name." The user should then click on the button entitled "Search." A true and correct copy of the computer printout for the "Quick Search" following the above instructions is attached for the Court's reference in **Exhibit 7**.

1 Haier's Trademark Registrations with the USPTO

2 3. Plaintiff requests that the Court take judicial notice Haier's seven (7)
3 trademark registrations on file with the USPTO. A true and correct copy of computer
4 printouts from the USPTO website showing seven (7) trademark applications and
5 registrations are attached as **Exhibit 8**. *Total Petroleum Puerto Rico Corp. v. Torres-*
6 *Caraballo*, 672 F. Supp. 2d 252, 257 (D.P.R. 2009) (Judicial notice is appropriate
7 where trademark registrations are readily determinable through the use of the
8 USPTO's website).

9 4. Information pertaining to Haier's U.S. trademark applications and
10 registrations is publicly available at the USPTO's website at www.uspto.gov. The
11 user should move down to area labeled "Trademarks" and click on the link "Search
12 Marks." The user should then click on the link "Word and/or Design Mark Search
13 (Structured)." The user should then type in the term "Haier Group Corporation" (with
14 quotation marks) in the first box labeled next to "Search Term." The user should then
15 click on the box next to the term "Field" and toggle down and select "Owner Name."
16 The user should then click on the button labeled "Submit Query." A true and correct
17 copy of how the "Word and/or Design Mark Search (Structured)" page with the above
18 search inserted is attached for the Court's reference as **Exhibit 9**.

19 5. Plaintiff requests that the Court take judicial notice of Haier's U.S.
20 trademark registration numbers:

21 • 28909681, for the word mark Haier, filed September 5, 2000;
22 • 2801693, for the word mark HEC, filed September 1, 2000;
23 • 2717688, for the word mark Haier, filed June 7, 1999;
24 • 2120737, for the word mark Haier, filed April 17, 1995;
25 • 2131584, for the word mark Haier, filed April 17, 1995;
26 • 213583, for a design mark that is a Chinese transliteration of the word
27 Haier, filed April 17, 1995; and

- 1678405, for a design mark featuring children, filed January 7, 1991.

A true and correct copy of Haier's Registration Certificates Available at the USPTO's website is attached as **Exhibit 10**.

6. Plaintiff requests that the Court take judicial notice of Haier's Section 8 and 15 declarations of use for registration numbers described in paragraph 5 above.

True and correct copies of the declarations available at the USPTO's website are attached as **Exhibit 11**.

Haier Design Center in Los Angeles

7. Plaintiff requests that the Court take judicial notice of the fact that there is a design center for “Haier” products located in Los Angeles. *See* Fed. R. Evid. 201(b)(2). This information is publicly available from Haier’s website at:

http://www.haier.net/abouthaier/HaierWorldwide/Introduction_usa.asp

True and correct copies of screenshot print-outs of the website are attached as **Exhibit 12.**

Haier Subsidiaries in New York and Delaware

8. Plaintiff requests that the Court take judicial notice of the fact that there are at least two (2) companies with the Haier name registered to do business in the state of New York. *See* Fed. R. Evid. 201(b)(2). This information is publicly available at the New York Department of State website:

http://appext9.dos.state.ny.us/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_nameid=2677660&p_corpid=2652642&p_entity_name=%48%61%69%65%72&p_name_type=%41&p_search_type=%42%45%47%49%4E%53&p_srch_results_page=0 and

http://appext9.dos.state.ny.us/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_nameid=2382337&p_corpid=2340455&p_entity_name=%48%61%69%65%72&p_name_type=%41&p_search_type=%42%45%47%49%4E%53&p_srch_results_page=0

1 True and correct copies of the corporate information available from the New York
2 Department of State are attached as **Exhibit 13**.

3 9. Plaintiff requests that the Court take judicial notice of the fact that there are
4 at least four (4) companies with the Haier name registered to do business in the state
5 of Delaware. *See Fed. R. Evid. 201(b)(2)*. This information is publicly available at the
6 Delaware Department of State – Division of Corporations website:

7 <https://delecorp.delaware.gov/tin/controller>

8 True and correct copies of the corporate information available from the Delaware
9 Department of State – Division of Corporations are attached as **Exhibit 14**.

10 **Haier's Advertising Presence and Sponsorship of the NBA**

11 10. Plaintiff requests that the Court take judicial notice of the fact that a
12 company presenting itself as "Haier" is the official sponsor of the National Basketball
13 Association ("NBA") and is prominently featured in prime time television
14 advertisements marketing its products and on the NBA.com website, including a fixed
15 link on the NBA.com home page to the "Haier Play of the Day." *See Fed. R. Evid.*
16 201(b)(2). An example of Haier's advertising and NBA sponsorship is publicly
17 available at the following website: <http://www.nba.com/video/playoftheday/>
18 A true and correct copy of a snapshot of the website is attached as **Exhibit 15**.

19 11. Plaintiff requests that the Court take judicial notice of the fact that there
20 are twenty-nine (29) NBA teams in the United States, four (4) NBA teams in
21 California, and two (2) NBA teams located in the Central District. This information is
22 publicly available at the following website:

23 http://www.nba.com/standings/team_record_comparison/conferenceNew_Std_Cnf.ht
24 ml

25 A true and correct copy of a snapshot of the website is attached as **Exhibit 16**.

1 **Haier's Products are Sold Throughout the Central District and the United States**

2 12. Plaintiff requests that the Court take judicial notice of the fact that
3 "Haier" products are carried in Walmart and Best Buy retailers. *See Fed. R. Evid.*
4 201(b)(2). This information is publicly available at Haier's website at:
5 http://www.haier.net/abouthaier/HaierWorldwide/Introduction_usa.asp

6 A true and correct copy of a snapshot of the aforementioned website is attached as
7 **Exhibit 12.**

8 13. Plaintiff requests that the Court take judicial notice of the fact that there
9 are thousands of Walmarts in the United States. *See Fed. R. Evid. 201(b)(2).* This
10 information is publicly available at:

11 <http://walmartstores.com/AboutUs/7606.aspx>

12 A true and correct copy of a snapshot of the aforementioned website is attached as
13 **Exhibit 17.**

14 14. Plaintiff requests that the Court take judicial notice of the fact that there
15 are over 1000 Best Buy stores in the United States. *See Fed. R. Evid. 201(b)(2).* This
16 information is publicly available at:

17 <http://phx.corporate-ir.net/phoenix.zhtml?c=83192&p=IROL-FAQ>

18 A true and correct copy of a snapshot of the aforementioned website is attached as
19 **Exhibit 18.**

20 15. Plaintiff requests that the Court take judicial notice of the fact there are at
21 least 20 Walmarts in the Central District. *See Fed. R. Evid. 201(b)(2).* This information
22 is publicly available at:

23 http://www.walmart.com/storeLocator/ca_storefinder_results.do?serviceName=&rx_t
24 tle=com.wm.www.apps.storelocator.page.serviceLink.title.default&rx_dest=%2Finde
25 x.gsp&srecords=50&sfsearch_single_line_address=Los+Angeles%2C+CA

26 A true and correct copy of a snapshot of the aforementioned website is attached as
27 **Exhibit 19.**

1 16. Plaintiff requests that the Court take judicial notice of the fact there are at
2 least 10 Best Buy stores in the Central District. *See* Fed. R. Evid. 201(b)(2). This
3 information is publicly available at:

4 [http://www.bestbuy.com/site/olspage.jsp?id=cat12093&type=page&allstores=yes&h=](http://www.bestbuy.com/site/olspage.jsp?id=cat12093&type=page&allstores=yes&h=387)
5 387

6 A true and correct copy of a snapshot of the aforementioned website is attached as
7 **Exhibit 20.**

8 **Defendants' Manifest Resources: Hiring of AmLaw 100 Firms**

9 17. Plaintiff requests that the Court take judicial notice of the fact that Haier,
10 Jinhui and Dazheng have each hired AmLaw 100 law firms to represent them in this
11 matter. *See* Fed. R. Evid. 201(b)(2). Alston & Bird LLP, Cadwalader, Wickersham, &
12 Taft LLP, and Reed Smith LLP each appear on the AmLaw 100 2010 list of highest
13 grossing revenue law firms in the United States. The AmLaw 100 list appears
14 annually in the *American Lawyer* magazine. The AmLaw 100 2010 list is publicly
15 available at the following address:

16 <http://www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202448484841>

17 A true and correct copy of a snapshot of the aforementioned website showing Alston
18 & Bird LLP, Cadwalader, Wickersham, & Taft LLP, and Reed Smith LLP on the
19 AmLaw 100 list attached as **Exhibit 21.**

1 **California is the Center of the U.S. Software Industry**

2 18. Plaintiff requests that the Court take judicial notice of the fact that California
3 is the center of the U.S. software industry. *See* Fed. R. Evid. 201(b)(2).

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5 Respectfully requested,

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7 DATED: June 27, 2011

8 FAYER GIPSON LLP

9 Gregory A. Fayer

10 Elliot B. Gipson

11 By: 

12 Elliot B. Gipson

13 Attorneys for Plaintiff

14 CYBERSITTER, LLC D/B/A

15 SOLID OAK SOFTWARE